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OFFICE OF PETITIONS

In re Application of
Richard David Goldberg et al
Application No. 10/696,782
Filed: October 29, 2003
Attorney Docket No. 844P01 USA

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: DECISION GRANTING PETITION
: UNDER 37 CFR 1.313(c)(2)
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This is a decision on the petition, filed August 4, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**, *nunc pro tunc*.

The file record discloses that a first Notice of Allowance and Fee(s) Due was mailed on March 22, 2005. On June 29, 2005, petitioner submitted a petition to revive under the unintentional provisions of 37 CFR 1.137(b) and payment of the issue fee. The petition to revive was granted on July 15, 2005. Thereafter, on August 4, 2005, petitioner filed a petition to withdraw from issue, a Request for Continued Examination and an Information Disclosure Statement.

It is noted that, although the petition to withdraw from issue had not been acted upon by the appropriate deciding official of the U.S. Patent and Trademark Office, the Technology Center processed the request for continued examination (RCE) under 37 CFR 1.114 and subsequently issued a new Notice of Allowance and Fee(s) Due and Notice of Allowability on August 25, 2005. Where an issue fee has been paid and an RCE is subsequently filed, the RCE is not a proper filing unless a petition to withdraw from issue has been granted. Therefore, the examiner was without authority to act further in the case absent a grantable petition withdrawing the application from issue. Nevertheless, in view of this decision on petition, the RCE is now considered a proper filing and the actions of the examiner taken thereafter are hereby ratified.

The file record of this case discloses that Part B - Fee(s) Transmittal form was received on November 28, 2005 (certificate of mailing date of November 23, 2005) in reply to the August 25, 2005 Notice of Allowance. Accordingly, this matter is being referred to Publishing Division for appropriate processing in the normal course of business.


Frances Hicks

Petitions Examiner
Office of Petitions